

1993

## Caauwe v. Caauwe : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS  
FOR THE STATE OF UTAH

930471 CA

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DEBRA KAY CAAUWE,	)	
Plaintiff/Appellee,	)	Case No. 930471-CA
vs.	)	
DARYL GENE CAAUWE,	)	Priority No. 15
Defendant/Appellant.	)	

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BRIEF OF APPELLEE  
DEBRA KAY CAAUWE

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This is an Appeal from Findings of  
Fact and Order on Plaintiff's Petition  
to Modify Decree of Divorce Entered by  
the Second Judicial District Court for  
Davis County, State of Utah, Honorable  
W. Brent West, District Judge

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Utah Court : 's

DEC 23 1983

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BRIEF OF APPELLEE  
DEBRA KAY CAAUWE

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JURISDICTION AND NATURE  
OF PROCEEDINGS

The Court of Appeals for the State of Utah has appellate jurisdiction in this domestic relations case pursuant to Section 78-2a-2(1) Utah Code Annotated, as amended, as it is an appeal from a final Order modifying a decree of divorce.

ISSUES PRESENTED FOR REVIEW  
AND STANDARDS OF REVIEW

1. Issue: Does federal law preclude a state court from treating "voluntary separation incentive pay" from the armed forces pursuant to 10 U.S.C. Section 1175 as marital property subject to

equitable division in a divorce modification proceeding brought by the former spouse Debra Kay Caauwe?

Standard of Review: Questions of law are reviewed under a correction of error standard, giving no deference to the trial court. Maxwell v. Maxwell, 796 P.2d 403, 404 (Utah App. 1990).

2. Issue: Are payments to defendant, Daryl Gene Caauwe, under the Voluntary Separation Incentive program, marital property to be equitably divided between the parties?

Standard of Review: The appellate court will not disturb the trial court's findings of fact, unless such findings are clearly erroneous. Hagen v. Hagen, 810 2d 478, 481 (Utah App. 1991). The trial court found the standard military retirement program and the Voluntary Separation Incentive program similar and that Daryl Gene Caauwe by taking advantage of the Voluntary Separation Incentive program attempted to eliminate entirely Debra Kay Caauwe's interests in his retirement benefits. On appeal, it is the burden of the party seeking to overturn the trial court's findings to marshall the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be against the clear weight of the evidence, thus making them clearly erroneous, In re Estate of Bartell, 776 P.2d 886 (Utah 1989); Riche v. Riche, 784 P.2d 465, 468 (Utah App. 1989). An appellate court will not disturb the trial court's decision as to modification of a divorce

decree absent an abuse of discretion, Myers v. Myers, 768 P.2d 979, 984 (Utah App. 1989).

3. Issue: Did the Utah trial court have subject matter jurisdiction to modify the decree of divorce entered in South Carolina?

Standard of Review: Questions of law are reviewed under a correction of error standard, giving no deference to the trial court. Maxwell v. Maxwell, 796 P.2d 403, 404 (Utah App. 1990).

4. Issue: Does the evidence support the trial court's finding that Daryl Gene Caauwe has the ability to pay Debra Kay Caauwe's attorney's fees, and that Debra Caauwe is in need of having her attorney fees paid?

Standard of Review: In light of the relevant factors and circumstances of this case, the appellate court must find an abuse of discretion in the trial court's determination and award of attorney fees. Rasband v. Rasband, 752 P.2d 1331 (Utah App. 1988).

#### STATEMENT OF THE CASE

This is a domestic relations case involving a petition for a modification of a Decree of Divorce seeking a determination that an "early out" incentive bonus received by Daryl Caauwe in lieu of standard military retirement benefits is marital property subject to equitable distribution between the parties.



### STATEMENT OF FACTS

Daryl Gene Caauwe enlisted in the Air Force in February, 1971. (Tr. at 25). He married Debra Kay Caauwe on March 25, 1972 in the State of Minnesota. (Tr. at 3). The parties had two children born of issue of their marriage. (Tr. at 3, 4). The parties were stationed initially at McCord Air Force Base in Tacoma, Washington. (Tr. at 5). Later in 1972 the parties relocated to Dakota Air Force Base in Tokoya, Japan. (Tr. at 5, 6). In 1974 Daryl Caauwe was discharged from the Air Force and attended college in Overton, Minnesota. (Tr. at 6). Daryl Caauwe re-enlisted in the Air Force in 1978 and was stationed at Hill Air Force Base, Utah until 1982. (Tr. at 6). The parties were stationed at Shaw AFB in South Carolina from 1982 to 1991. (Tr. at 6). In September, 1991, Debra Caauwe was granted a Decree of Divorce from Daryl in Sumter County, South Carolina. (Decree of Divorce).

The South Carolina Decree of Divorce indicates the parties entered into a Property and Separation Agreement on August 19, 1991. (Decree of Divorce). South Carolina had subject matter jurisdiction and in personam jurisdiction to hear the divorce in 1991 as the parties resided in South Carolina, the parties personally appeared before the Court, and the parties entered into a stipulation resolving all the issues in the divorce. (Decree of Divorce).

Daryl Caauwe voluntarily separated from the Air Force on December 31, 1992. (Tr. at 8, 9). In addition to his regular pay, Daryl received separation pay, and a Voluntary Separation Incentive bonus. (Tr. at 27, 28). Daryl testified he received an incentive bonus of around \$7,000.00 in December, 1992. (Tr. at 28).

Daryl misled and misrepresented to the trial court his total incentive received was \$7,000.00 to separate from the Air Force. (Tr. at 29). In response to the question of "do you receive any kind of monthly check or any type of monetary sum from the Air Force today" Daryl responded negatively. (Tr. at 29).

In point of fact, Daryl was awarded an incentive bonus of 35.50 annual payments of \$9,473.17. (Enlisted Voluntary Separation Agreement). Daryl was credited with 213 months of creditable military time, i.e. 17 years 9 months. (Enlisted Voluntary Separation Agreement). Daryl's incentive bonus is valued at \$336,297.53, \$9,473.17 times 35.50 payments. (Enlisted Voluntary Separation Agreement). Both Daryl and Daryl's trial counsel gave the trial court the impression that Daryl's total bonus was about \$7,000.00. (Tr. at 29, 46, 47).

The parties South Carolina decree in paragraph K. provides that Daryl will not merge his retired pay with any other provisions, or pursue any course of action to defeat Debra's right to receive her 50% portion of the full net disposable retirement pay. (Decree of Divorce.) Daryl agree to indemnify Debra for any

breach of paragraph K. (Decree of Divorce.)

On June 3, 1992, Daryl and Debra Caauwe filed a certified copy of their South Carolina Divorce Decree with the Davis County Clerk's Office. (Judgment in A Domestic Case Form). Judgment was entered by the Clerk of the Court. (Judgment in a Domestic Case Form.)

On June 3, 1992, a Stipulation, Agreement and Order Modifying Decree of Divorce was filed by Daryl and Debra Caauwe in Davis County District Court, designated as case No. 926703705. (Stipulation). An Order Modifying Decree of Divorce was entered on June 8, 1992 signed by District Court Judge Douglas L. Cornaby. (Order Modifying Decree). Daryl and Debra Caauwe agreed by stipulation to modify the South Carolina Decree by granting custody of Tammy Marie Caauwe to Daryl and Daryl's child support was changed to the sum of \$139.00 per month for the support of Stacy Lynn Caauwe (Order Modifying Decree). Child support to Debra for both children was originally \$500.00 per month. (Decree of Divorce).

A second Stipulation, Agreement, and Order Modifying Decree of Divorce was filed August 17, 1992 by Daryl and Debra Caauwe in Case No. 926703705. (Stipulation). An Order Modifying Decree of Divorce, pursuant to Stipulation of the parties, was entered on August 17, 1993 signed by District Judge Jon M. Memmott granting Daryl sole ownership of the parties home in South

Carolina, and the equity therein, subject to a payment of \$1,900.00 to Debra payable at \$100.00 per month. (Order Modifying Decree of Divorce). Debra was awarded in addition thereto the sole ownership of her retirement with Walmart. (Order Modifying Decree of Divorce).

Trial in this case was held on April 23, 1993 before the Honorable W. Brent West. Debra Caauwe personally appeared and testified at trial as did Daryl Caauwe. The parties, through counsel, later stipulated the trial judge may receive and consider Daryl's Enlisted Voluntary Separation Incentive Agreement detailing the exact terms and amount that Daryl was entitled to from the Air Force.

Debra Caauwe is employed by Walmart in Fredlee, Minnesota. (Tr. at 3). Debra earns \$6.95 per hour averaging between 32 to 38 hours per week. (Tr. at 13).

Stacy Caauwe still resides and is being supported by Debra even though her child support has terminated. (Tr. at 13, 14). Debra pays rent of \$385.00 per month, utilities of about \$30.00 to \$35.00 per month, \$66.00 per month auto insurance, food of \$50.00 to \$60.00 per week and owes a \$1,000.00 for Stacey's medical expenses. (Tr. at 14, 15).

Daryl Caauwe is also employed at Walmart in Utah earning \$5.65 per hour with a take home pay of \$350.00 bi-weekly. (Tr. at 32). Daryl also works at Country Cousins earning \$4.65 per hour

averaging 20 to 30 hours per week. (Tr. at 33). Daryl has remarried and his present wife is employed and enlisted in the Air Force. (Tr. at 24). Daryl received the initial annual annuity payment of \$7,000.00 and has not divided the same with Debra. (Tr. at 29, 36).

Debra incurred attorney fees through trial of \$1,000.00 and has incurred additional attorney fees for this appeal. (Tr. at 15, 16, 39).

#### SUMMARY OF THE ARGUMENT

The United Supreme Court in McCarty v. McCarty, 453 U.S. 210 (1981) and Mansell v. Mansell, 490 U.S. 581 (1989) did not divest state courts of jurisdiction to divide military retirement benefits. The Supreme Court only required state courts to apply federal law in determining the character of military pension benefits.

In response to the McCarty decision Congress immediately passed, the Uniform Services Former Spouse's Protection Act, USFSPA, 10 U.S.C. Section 1408, permitting state courts to treat military retired pay as marital property subject to equitable distribution. Congress thereby expressed a clear intent that retirement benefits are divisible between spouses.

In this case neither 10 U.S.C. Section 1174a or 1175

discuss USFSPA or divisibility of incentive bonus payments in the event of divorce. The legislative history to this legislation indicates the Department of Defense did not intend to offer the voluntary separation incentives to military personnel with fifteen (15) to twenty (20) years time in grade such as Daryl Caauwe but considered an early retirement option as a viable alternative to this segment of military personnel. Incentive bonuses to individuals with time in grade similar to Daryl Gene Caauwe should be considered as early retirement, and in keeping with pronounced Congressional intent, divisible with former spouses.

The parties to this case entered into a stipulation in the divorce wherein Daryl Caauwe agreed to pursue no course of action that would defeat or limit Debra Caauwe's right to receive a fifty (50%) portion of the full net retirement pay and further agreed to indemnify her if he breached the Stipulation. The trial court made a finding that Daryl Caauwe breached the Stipulation by attempting to eliminate entirely Debra Caauwe's right to Daryl's military retirement benefits by electing to receive \$336,297.53 in Voluntary Separation Incentive bonus payments. The trial court merely ordered Daryl Caauwe to share equally with Debra Caauwe the net voluntary incentive separation bonus payments in keeping with the parties' original Stipulation.

The Utah trial Court had subject matter jurisdiction to divide the voluntary incentive bonus pursuant to the original terms

of the South Carolina Decree of Divorce. Daryl Caauwe is estopped from denying the Utah trial court lacked jurisdiction having initiated and obtained in Utah two (2) Orders modifying the South Carolina divorce decree on previous occasions.

The trial Court did not abuse its discretion in awarding Debra Caauwe's attorney fees having considered Daryl Caauwe's full time employment, additional part time employment, his present wife's employment, his receipt of the initial incentive bonus payment, and the financial needs and ability of Debra Caauwe.

#### ARGUMENT

##### **I. FEDERAL LAW DOES NOT PRECLUDE A STATE COURT FROM TREATING VSI PAYMENTS AS MARITAL PROPERTY SUBJECT TO EQUITABLE DIVISION**

In McCarty v. McCarty, 453 U.S. 210 101 S. Ct. 2728, 69 L. Ed 2d 589 (1981), the United States Supreme Court addressed the issue of whether military retirement benefits may be treated as marital property and concluded that federal law precluded a state court in a community property state from dividing military retirement benefits in a dissolution proceeding. A short time later, Congress enacted 10 U.S.C. Section 1408 (1983), the Uniformed Services Former Spouse's Protection Act, USFSPA, enabling state courts to consider retirement benefits in deciding divorce settlements.

In Greene v. Greene, 751 P.2d 827, 831 (Utah App. 1988), the Utah Court of Appeals held that military benefits accrued in whole or in part during marriage constitute marital property under Utah law and are subject to division in a divorce proceeding. The Court cited with approval Bailey v. Bailey, 745 P.2d 830, 831-832, (Utah App. 1987) that whether retirement benefits are subject to distribution does not turn on present use or control but whether a right to the benefit or asset has accrued in whole or in part during the marriage.

In Maxwell v. Maxwell, 796 P.2d 403 (Utah App. 1990), the Utah Court of Appeals held that state courts have subject matter jurisdiction to enter an order dividing military retirement benefits. The Court of Appeals emphasized that on remand by the United States Supreme Court in Mansell, the California Court of Appeals determined that in neither McCarty nor in Mansell did the Supreme Court divest state courts of jurisdiction to divide military retirement benefits. The Court simply required state courts to apply federal law in determining the character of military pension benefits. See In re Marriage of Mansell, 217 Cal. App. 3rd 219, 216 Cal. App. 3rd 937, 265 Cal. Rptr. 227, 231-234 (1989).

On December 5, 1991, Congress enacted 10 USC Section 1175 to provide for voluntary incentive payments to military members to leave the armed services. The House conference report indicates an



intent not to offer voluntary incentive bonuses to members with as many years in service as Daryl Caauwe, but intended to cover that segment by an early retirement option:

In addition, the conferees are interested in exploring other options to help the military Services reduce their personnel inventory on a voluntary basis. For example, personnel overages in the 15 to 20 year segment of the force may be trimmed by offering an early retirement option. The conferees understand that the Department of Defense does not intend to offer the voluntary separation incentives provided in this section to the 15 to 20 year segment of the force, so an early retirement option may be a viable alternative.

H.R. Conf. Rep. No. 102-311, 102d Cong., 1st Sess. (1991), reprinted in 1991 U.S. Code Cong. and Adm. News, p. 1113.

Daryl Caauwe in his appeal brief concedes neither section 1174a nor section 1175 mentions the USFSPA or divisibility of the payments in the event of divorce. Congress has made clear its intent in the USFSPA legislation that military retirement benefits were divisible by state courts. The House conference report indicates that Congress considered voluntary incentive payments to members such as Daryl Caauwe to be an early retirement inasmuch as the Department of Defense was not going to offer voluntary separation incentives to members with over fifteen (15) years of

service. Absence any express legislation to the contrary, the intent of Congress appears to be that early retirement incentive payments to Daryl Caauwe were divisible by state courts as marital property. The size of the VSI payment to Daryl Caauwe, \$336,297.53, is indicative of retirement, not a bonus.

In any event, Debra Caauwe asserts the intent of Congress in enacting the legislation concerning VSI payments is immaterial as the parties stipulated in the decree of divorce that Daryl Caauwe would pursue no course of action that would defeat or limit Debra Caauwe's right to receive a fifty (50%) portion of Daryl's retirement benefits. Furthermore, Daryl Caauwe agreed to indemnify Debra Caauwe to that effect and not take any action to cause a limitation in the amount of net retirement pay which Debra Caauwe had vested. In contravention of the parties decree of divorce, Daryl Caauwe has deliberately pursued a course of action that pays him \$336,297.53 by June 30, 2026, and awards no sum to Debra Caauwe.

Daryl Caauwe voluntarily separated from the Air Force on December 31, 1992 and was awarded 213 months of credible time in computing his VSI payments; i.e. seventeen (17) years and nine months. On October 23, 1992 Congress enacted 10 U.S.C. Section 1176 which prohibits an enlisted member from being selected to be involuntarily separated, after completion of eighteen (18) years or more of credible military service. If Daryl Caauwe had remained in the Air Force for another three (3) months, he could not have been

involuntary separated.

Furthermore, Daryl Caauwe did not have to be promoted to a higher rank in order to remain in the Air Force, and only had to serve out the balance of his enlistment period. (Tr. at 26).

The trial court made specific findings that by electing to take the VSI payment Daryl Caauwe has attempted to eliminate entirely Debra Caauwe's interest in his retirement benefits contrary to their stipulation (paragraph 6 of Findings and Order). The trial court found both programs similar, that is the VSI program and the standard retirement program, as the member's payment is based upon credited time served in the military together with base pay at the time of separation. (Paragraphs 7, 8, 9 of Findings and Order). These findings remain uncontested as Daryl Caauwe has not claimed on appeal they are clearly erroneous nor made the trial court's findings an issue.

The trial court had the right to interpret and enforce the Decree of Divorce before it as the same court had twice before modified it. Pursuant to Section 30-3-5(2) UTAH CODE ANNOTATED, as amended, the trial court has continuing jurisdiction to make subsequent changes or new orders for the distribution of property. This statute confers broad discretion upon trial courts in the division of property, regardless of its source, or time of acquisition. Walters v. Walters, 812 P.2d 64 (Utah App. 1991), Burke v. Burke, 733 P.2d 133, 134-135 (Utah 1987). Further, the

purpose of property divisions is to allocate property in the manner which best serves the needs of the parties and best permits them to pursue their separate lives. Noble v. Noble, 761 P.2d 1369, 1373 (Utah 1988).

The source for Daryl Caauwe VSI payment was primarily credited military time while married to Debra Caauwe. It is a benefit conferred upon Daryl Caauwe as a result of his military enlistment in the Air Force. The Court should look to the source of the benefit to determine if it is a divisible military service benefit. In the case of Leatherman v. Leatherman, 833 P.2d 105 (Idaho 1992), Dorothy Leatherman was awarded 38% of Thorton Leatherman's civil service annuity from the United States Post Office based upon fourteen (14) years of military service during the parties' marriage.

In September, 1982, Mr. Leatherman was rendered totally disabled as a result of a heart attack. In order to qualify for 100% civil service disability he surrendered his military retirement benefit eligibility. On January 30, 1983 he retired from the civil service where he had been a postal employee. Although he had no existing military retirement benefits at that time, he was entitled to credit for his years of military service in determining his civil service annuity.

Mrs. Leatherman filed to modify the Decree of Divorce seeking a division of her former husband's military retirement

benefits pursuant to the Uniform Services Former Spouse's Protection Act (USFSPA). The Idaho Supreme Court in awarding Mrs. Leatherman 38% of the civil service annuity held "in Idaho, we look to the source of the benefit." 833 P.2d at 108. The civil service benefits Mr. Leatherman received can be traced to what he was entitled to receive as military retirement benefits.

The trial court was correct in awarding Debra Caauwe fifty 50% of Daryl Caauwe's VSI payments as this military retirement benefit was earned during the parties lengthy marriage.

## **II THE TRIAL COURT DID HAVE SUBJECT MATTER JURISDICTION TO MODIFY THE SOUTH CAROLINA DECREE OF DIVORCE**

Debra Caauwe filed her Petition to Modify the Decree of Divorce in an existing case initially commenced in the District Court of Davis County by Daryl Caauwe. Daryl Caauwe through his Utah attorney had twice filed seeking orders to modify the Decree of divorce. Daryl Caauwe was successful in modifying the Decree on June 5, 1992 and again on August 14, 1992. The South Carolina decree had been domesticated by Daryl Caauwe in June, 1992 when he first sought to modify the Decree.

In Maxwell v. Maxwell, the Utah Court of Appeals held the trial court had subject matter jurisdiction to provide for disposition of military benefits as part of the divorce decree and

that Otis Maxwell waived his right to assert that the Court's division of such property was in excess of its jurisdiction, by signing a Stipulation of Settlement.

In this case, Daryl Caauwe cannot complain of the trial court enforcing and interpreting the decree as Daryl signed a Stipulation which was incorporated into the Decree that he would pursue no course of action to defeat or limit Debra Caauwe's interest in the military retirement.

Also, Daryl Caauwe having through his own Utah counsel twice modified the South Carolina Decree of Divorce in the State of Utah is estopped or has waived any right to contest subject matter jurisdiction. Daryl having accepted the benefits of two prior modifications is barred by the doctrine of estoppel and/or waiver from repudiating the authority of the trial court. See Estoppel and Waiver, 28 Am. Jur. 2d Section 59.

### **III THE TRIAL COURT'S FINDING THAT DARYL CAAUWE HAS THE ABILITY TO PAY DEBRA CAAUWE'S ATTORNEY FEES IS SUPPORTED BY THE EVIDENCE**

The trial court made a finding that Debra is employed by Walmart earning \$6.95 per hour averaging between 32 to 38 hours per week earning a net pay of \$373.00 bi-weekly (Finding No. 16).

The trial court found Daryl earned a comparable wage at Walmart but in addition was remarried and his wife was enlisted

with the United States Air Force (Finding 17). The court further found Daryl had the ability to pay Debra's attorney fees of \$1,000.00 and Debra was in need of having her attorney fees paid. (Finding No. 18).

The record supports that Daryl has greater earnings than Debra as he is also employed at Country Cousins earning \$4.65 per hour averaging 20 to 30 hours per week. Daryl has remarried and his wife is enlisted in the Air Force contributing to the family income. In Crockett v. Crockett, 836 P.2d 818 (Utah App. 1992), the Court of Appeals held the trial court is not precluded as a matter of law from considering the income of a receiving parent's new spouse when determining the receiving parent's "need" for costs and attorney fees. Similarly, the trial court in the case should be able to consider Daryl Caauwe's present wife's employment in considering his ability to pay Debra's attorney fees.

Debra Caauwe has not received any of the initial \$7,000.00 annual annuity payment as Daryl has retained the entire sum. Debra testified she is still supporting one daughter, Stacy Caauwe, without any child support, and that she pays monthly payments of \$385.00 for rent, \$35.00 utilities, \$66.00 auto insurance, and \$216.00 to \$250.00 for food. (Tr. at 14, 15). Debra has incurred over \$1,000.00 of medical expenses for her daughter. (Tr. at 15). The record supports Debra is in need of having her attorney fees paid and Daryl has the ability to pay her attorney fees.

#### IV DEBRA CAAUWE SHOULD BE AWARDED ATTORNEY FEES ON APPEAL

Debra Caauwe should be awarded a reasonable attorney fees for attorney fees incurred on appeal. Ordinarily, when fees in a divorce are awarded at the trial level to the party who prevails on appeal, fees should also be awarded to that party on appeal. Rappleye v. Rappleye, 855 P.2d 260 (Utah App. 1993); Bell v. Bell, 810 P.2d 489, 494 (Utah App. 1991).

#### CONCLUSION

The United States Supreme Court in McCarty and Mansell did not divest state courts of jurisdiction to divide military retirement benefits. State courts are only required to apply federal law in characterizing military retirement benefits. The legislative history indicates Congress considered the VSI payment to Daryl Caauwe as an early retirement due to his lengthy military service. In keeping with the clear intent of Congress as set forth in the Uniform Service Former Spouse's Protection Act the VSI payment to Daryl Caauwe should be divisible especially since Sections 10 USC 1174a and 1175 are silent as to divisibility of payments in the event of divorce.

These parties entered into a Stipulation incorporated in the South Carolina divorce decree that Daryl Caauwe would pursue no course of action to defeat or limit Debra Caauwe's interest in the




military retirement. Daryl Caauwe breached that Stipulation by accepting VSI payments and thereby eliminating Debra Caauwe's interest in the military retirement. Daryl Caauwe should be required to indemnify Debra Caauwe for this breach and pay her 50% of his VSI payments.

In Maxwell, Utah ruled that its state courts have subject matter jurisdiction to provide for disposition of military benefits as part of the divorce decree and Daryl Caauwe has waived his right to assert that the Court's division was in excess of its jurisdiction by signing a Stipulation to pursue no course of action to defeat or limit Debra Caauwe's interest in the military retirement benefits.

The trial court's awarding Debra Caauwe attorney fees is supported by the record showing she is in need of having her attorney fees paid, that Daryl Caauwe has the ability to pay those attorney's fees, and the attorney's fees awarded are reasonable.


Debra Caauwe respectfully requests the Court of Appeals affirm the decision of the trial court in all respects, order payment of Debra Caauwe's attorney fees on appeal, and remand the case back to the district court for determination of attorney fees on appeal.

DATED this 22<sup>nd</sup> day of December, 1993.

  
ROBERT L. NEELEY  
Attorney for Debra Kay Caauwe  
Plaintiff/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I mailed four (4) true and correct copies of the foregoing Brief of Appellee, Debra Kay Caauwe, postage prepaid, this 22<sup>nd</sup> day of December, 1993, to Ellen Maycock, Kruse, Landa & Maycock, Eighth Floor, Bank One Tower, 50 West Broadway, Salt Lake City, Utah 84101-2034.

  
ROBERT L. NEELEY  
Attorney for Debra Kay Caauwe  
Plaintiff/Appellee

### ADDENDUM INDEX

1. Memorandum Decision dated May 25, 1993
2. Findings of Fact and Order on Plaintiff's Petition to Modify Decree of Divorce dated June 23, 1993
3. 10 U.S.C. Section 1174a
4. 10 U.S.C. Section 1175
5. 10 U.S.C. Section 1176
6. 1991 U.S. Code Cong. and Adm. News, P. 1112-1113
7. Enlisted Voluntary Separation Incentive Agreement

Tab 1

IN THE SECOND DISTRICT COURT, STATE OF UTAH  
COUNTY OF DAVIS

---

Debra Kay Caauwe,	:	DECISION
	:	
Plaintiff,	:	Civil No. 926703705
	:	
vs.	:	
	:	
Daryl Gene Caauwe,	:	
	:	
Defendant.	:	

---

The issue is whether the Plaintiff is entitled to 50% of the Defendant's Voluntary Separation Incentive Pay from the military.

Pursuant to the parties Divorce Decree, the Plaintiff was entitled to 50% of the Defendant's monthly retirement. After approximately 17 plus years, the Defendant voluntarily elected to forgo his retirement. He took advantage of the military's Voluntary Separation Incentive Program. The Plaintiff contends that the Voluntary Separation Incentive Pay program was taken, by the Defendant, in lieu of his military retirement benefits. As such, she claims a 50% interest in his Voluntary Separation Incentive Pay.

On the other hand, the Defendant claims that his Voluntary Separation Incentive Pay is separate and distinct from his military retirement benefits. He contends that the Voluntary Separation Incentive Pay program has a different purpose than

Page Two  
Decision

military retirement and should be treated differently. He further claims that the Voluntary Separation Incentive Pay is personal property acquired after the marriage. It is not marital property subject to distribution to the Plaintiff.

The Court finds for the Plaintiff. The Divorce Decree is dispositive. Paragraph 4K of the decree states ... that the Defendant agrees not to merge the (Defendant's) retired or retainer pay with any other pension, and not to pursue any course of action that would defeat the (Plaintiff's) right to receive a portion of the full net disposable retired or retainer pay of the (Defendant) (emphasis added.) The (Defendant) further agrees not to take any action by merger of the military retirement pension so as to cause a limitation in the amount of the total net monthly retirement or retainer pay in which the (Defendant) has a vested interest, and, therefore, the (Defendant) will not cause a limitation of the (Plaintiff's) monthly payments as set forth above. The Divorce Decree further provides that if the Defendant breaches the agreement, he will indemnify the Plaintiff by making direct monthly payments to the Plaintiff in the amount provided in Paragraph 4C of the decree. Those payments are to be made under the same terms and conditions as if those payments were made pursuant to Paragraph 4C. Paragraph 4C of the decree gives the Plaintiff a 50% interest in the Defendant's net disposable retired or retainer pay. See

Page Three  
Decision

paragraph 4F of the Divorce Decree for a definition of "net disposable.")

By taking advantage of the military's Voluntary Separation Incentive Pay program, the Defendant has attempted to eliminate entirely the Plaintiff's interest in his retirement benefits. Under the divorce decree, he agreed not to do that. He agreed not to pursue any course of action that would defeat or limit her interest in his military retirement. As such, he is required to pay her the equivalent of her 50% interest in his net disposable retirement pay. However, the Defendant did not earn a full retirement from the military. Instead, he substituted, in its place, the Voluntary Separation Incentive Pay program. Both programs are similar. They both use base salary and length of service to determine the amount of benefit. Since the Court can't determine from the evidence what 50% of the Defendant's net disposable retirement pay would be, the Plaintiff is awarded a 50% interest in the Defendant's net disposable Voluntary Separation Incentive Pay.

In addition, the Court is enforcing a South Carolina Divorce Decree. The decree states that the Plaintiff will receive a 50% share of the Defendant's full retirement. The decree makes no provision for application of the Woodward formula that might have been applicable had it been a Utah Divorce Decree. Full faith and credit requires enforcement of the South

Page Four  
Decision

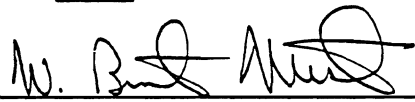
Carolina decree without modification under the Woodward Formula.

Finally, the Plaintiff is awarded her costs and attorney's fees of \$1,000.00 for having to bring this Petition to enforce the Divorce Decree. She has prevailed. The Defendant has the financial ability to pay Plaintiff's fees. The Plaintiff is in financial need of having her attorney's fees paid. The fees are reasonable.

Plaintiff's attorney will please prepare Findings of Facts, Conclusions of Law and and Order consistent with this ruling.

DATED this 25<sup>TH</sup> day of May, 1993.

Signed

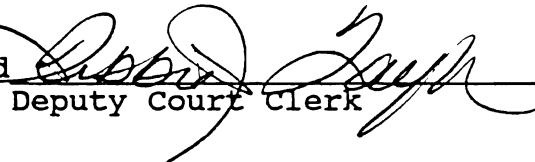


W. Brent West  
District Court Judge

#### CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Decision to Robert L. Neeley, Attorney for Plaintiff, at 2485 Grant Avenue., Suite 200, Ogden, Utah 84401, and to Brent E. Johns, Attorney for Defendant, at 2411 Kiesel Avenue, Suite 101, Ogden, Utah 84401-2391, postage prepaid, dated this 25<sup>TH</sup> day of May, 1993.

Signed



Deputy Court Clerk



IN THE SECOND DISTRICT COURT, STATE OF UTAH  
COUNTY OF DAVIS

---

Debra Kay Caauwe,	:	DECISION
	:	
Plaintiff,	:	Civil No. 926703705
	:	
vs.	:	
	:	
Daryl Gene Caauwe,	:	
	:	
Defendant.	:	

---

The issue is whether the Plaintiff is entitled to 50% of the Defendant's Voluntary Separation Incentive Pay from the military.

Pursuant to the parties Divorce Decree, the Plaintiff was entitled to 50% of the Defendant's monthly retirement. After approximately 17 plus years, the Defendant voluntarily elected to forgo his retirement. He took advantage of the military's Voluntary Separation Incentive Program. The Plaintiff contends that the Voluntary Separation Incentive Pay program was taken, by the Defendant, in lieu of his military retirement benefits. As such, she claims a 50% interest in his Voluntary Separation Incentive Pay.

On the other hand, the Defendant claims that his Voluntary Separation Incentive Pay is separate and distinct from his military retirement benefits. He contends that the Voluntary Separation Incentive Pay program has a different purpose than

Page Two  
Decision

military retirement and should be treated differently. He further claims that the Voluntary Separation Incentive Pay is personal property acquired after the marriage. It is not marital property subject to distribution to the Plaintiff.

The Court finds for the Plaintiff. The Divorce Decree is dispositive. Paragraph 4K of the decree states ... that the Defendant agrees not to merge the (Defendant's) retired or retainer pay with any other pension, and not to pursue any course of action that would defeat the (Plaintiff's) right to receive a portion of the full net disposable retired or retainer pay of the (Defendant) (emphasis added.) The (Defendant) further agrees not to take any action by merger of the military retirement pension so as to cause a limitation in the amount of the total net monthly retirement or retainer pay in which the (Defendant) has a vested interest, and, therefore, the (Defendant) will not cause a limitation of the (Plaintiff's) monthly payments as set forth above. The Divorce Decree further provides that if the Defendant breaches the agreement, he will indemnify the Plaintiff by making direct monthly payments to the Plaintiff in the amount provided in Paragraph 4C of the decree. Those payments are to be made under the same terms and conditions as if those payments were made pursuant to Paragraph 4C. Paragraph 4C of the decree gives the Plaintiff a 50% interest in the Defendant's net disposable retired or retainer pay. See

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Decision

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By taking advantage of the military's Voluntary Separation Incentive Pay program, the Defendant has attempted to eliminate entirely the Plaintiff's interest in his retirement benefits. Under the divorce decree, he agreed not to do that. He agreed not to pursue any course of action that would defeat or limit her interest in his military retirement. As such, he is required to pay her the equivalent of her 50% interest in his net disposable retirement pay. However, the Defendant did not earn a full retirement from the military. Instead, he substituted, in its place, the Voluntary Separation Incentive Pay program. Both programs are similar. They both use base salary and length of service to determine the amount of benefit. Since the Court can't determine from the evidence what 50% of the Defendant's net disposable retirement pay would be, the Plaintiff is awarded a 50% interest in the Defendant's net disposable Voluntary Separation Incentive Pay.

In addition, the Court is enforcing a South Carolina Divorce Decree. The decree states that the Plaintiff will receive a 50% share of the Defendant's full retirement. The decree makes no provision for application of the Woodward formula that might have been applicable had it been a Utah Divorce Decree. Full faith and credit requires enforcement of the South

Page Four  
Decision

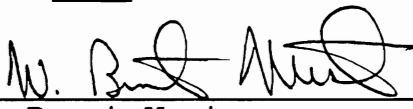
Carolina decree without modification under the Woodward Formula.

Finally, the Plaintiff is awarded her costs and attorney's fees of \$1,000.00 for having to bring this Petition to enforce the Divorce Decree. She has prevailed. The Defendant has the financial ability to pay Plaintiff's fees. The Plaintiff is in financial need of having her attorney's fees paid. The fees are reasonable.

Plaintiff's attorney will please prepare Findings of Facts, Conclusions of Law and and Order consistent with this ruling.

DATED this 25<sup>TH</sup> day of May, 1993.

Signed

  
W. Brent West  
District Court Judge

#### CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Decision to Robert L. Neeley, Attorney for Plaintiff, at 2485 Grant Avenue., Suite 200, Ogden, Utah 84401, and to Brent E. Johns, Attorney for Defendant, at 2411 Kiesel Avenue, Suite 101, Ogden, Utah 84401-2391, postage prepaid, dated this 25<sup>TH</sup> day of May, 1993.

Signed

  
Deputy Court Clerk

Tab 2

ROBERT L. NEELEY #2373  
Attorney for Plaintiff  
2485 Grant Ave., Suite 200  
Ogden, Utah 84401  
Telephone: 621-3646

FILED IN CLERK'S OFFICE

JUN 24 11 45 AM '93

CLERK OF DISTRICT COURT

BY DEBRA KAY CAAUWE

IN THE DISTRICT COURT OF DAVIS COUNTY, STATE OF UTAH

DEBRA KAY CAAUWE, )  
Plaintiff, ) FINDINGS OF FACT AND ORDER ON  
vs. ) PLAINTIFF'S PETITION TO MODIFY  
DARYL GENE CAAUWE, ) DECREE OF DIVORCE  
Defendant. ) Judge:  
Civil No. 926703705

NBW

That hearing on Plaintiff's Petition to Modify Decree of Divorce, having come on regularly for hearing, before the Honorable W. Brent West, District Court Judge, on the 23rd day of April, 1993. Plaintiff, Debra Kay Caauwe, was personally present and represented by her attorney, Robert L. Neeley; and defendant, Daryl Gene Caauwe, was personally present and represented by his attorney, Brent E. Johns. The plaintiff and defendant having been sworn and testified; and the Court having received exhibits from the respective parties; and being fully advised in the matter; hereby enters the following Findings of Fact and Order on Plaintiff's Petition to Modify Decree of Divorce:

1. That plaintiff obtained a Decree of Divorce from defendant on or about the 7th day of September, 1991, in the Family Court of the Third Judicial Circuit, County of Sumter, State of South Carolina.

2. Pursuant to paragraph 4(c). of the Divorce Decree,

JUDGMENT ENTERED

BY his

FILMED

00201267

plaintiff was to receive 50% of defendant, Daryl Gene Caauwe's net disposable retire or retainer pay in connection with defendant's military retirement benefits acquired from the United States Air Force.

3. That pursuant to paragraph 4(k) of the Decree of Divorce, defendant agreed not to merge the members retired or retainer pay with any other pension, and not to pursue any course of action that would defeat the spouses right to receive a portion of the full net disposable retired or retainer pay of the member. The member agreed not to take any action by merger of the military retirement pension so as to cause a limitation in the amount of the total net monthly retirement or retainer pay in which the member has a vested interest and, therefore, the member should not cause a limitation of the spouses monthly payments as set forth above. The member agreed to indemnify the spouse for any breach of this paragraph.

4. The issue before the above-entitled Court is whether plaintiff, Debra Kay Caauwe, is entitled to 50% of Defendant's Voluntary Separation Incentive Pay from the United States Air Force.

5. Defendant took advantage of the United States Air Force's Voluntary Separation Incentive Program, and plaintiff contends that the Voluntary Incentive Program was taken, by the defendant, in lieu of his military retirement benefits, and as such, she claims a 50% interest in his Voluntary Separation Incentive Pay. The defendant claims that his Voluntary Separation Incentive Pay is separate and distinct from his military retirement

benefits. Defendant contends the Voluntary Separation Incentive Pay Program has a different purpose and military retirement and should be treated differently. Defendant further claims that the Voluntary Separation Incentive Pay is personal property acquired after the marriage and is not marital property subject to distribution to the plaintiff.

6. The Court finds by taking advantage of the Military Voluntary Separation Incentive Program, the defendant has attempted to eliminate entirely the plaintiff's interest in his retirement benefits. Under the South Carolina Divorce Decree, defendant agreed not to do that. Defendant agreed not to pursue any course of action that would defeat or limit plaintiff's interest in defendant's military retirement.

7. Under the Decree of Divorce, defendant is required to pay plaintiff the equivalent of plaintiff's 50% in his net disposable retirement pay. However, the defendant did not earn a full retirement from the United States Air Force. Instead, defendant substituted, in its place, the Voluntary Separation Incentive Pay Program.

8. The Court finds both programs are similar. The Court finds that both programs use base salary and length of service to determine the amount of benefit.

9. Under the Voluntary Separation Incentive Pay Program, the United States Air Force computed defendant's base pay of \$1,779.00 and multiplied the same by 213 months as defendant was credited with serving 17 years and 9 months effective military



service and multiplied the same by 15% to arrive at a lump sum benefit payment of \$56,839.05. The Court received this information based upon Stipulation of the parties pursuant to information provided by response to plaintiff's Subpoena Duces Tecum.

10. Defendant however elected an annual annuity of \$9,473.17 which was arrived at by the United States Air Force multiplying defendant's base pay of \$1,779.00 X 213 months X 2.5% to arrive at an annual installment annuity of \$9,473.17.

11. Since the Court cannot determine exactly from the evidence what 50% of defendant's net disposable would be, the plaintiff is awarded a 50% interest in the defendant's net disposable voluntary separation pay. Defendant is ordered to pay plaintiff, Debra Kay Caauwe, 50% of the amount received on or about January, 1993, believed to be approximately \$7,000.00 as per the testimony of defendant. Judgment is granted to plaintiff against defendant, Daryl Gene Caauwe, for the sum of \$3,500.00 for plaintiff's share of defendant's initial payment.

12. Hereafter, plaintiff is to receive 50% of the net annual annuity payment from each of the remaining 34 annual installment payments of \$9,473.17.

13. As the Court is enforcing its South Carolina Decree of Divorce which provides that plaintiff shall receive a 50% portion of defendant's full retirement, the Decree makes no provision for application of the Utah Woodward Formula that might have been applicable had it been a Utah Divorce Decree.

14. Full faith and credit requires enforcement of the

South Carolina Decree without modification under the Utah Woodward Formula.

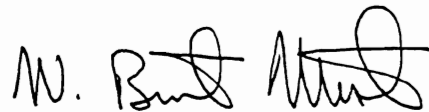
15. That plaintiff is awarded her cost and attorney fees of \$1,000.00 for having to bring this Petition to enforce the Decree of Divorce, and accordingly, judgment is granted in favor of plaintiff and against the defendant for the sum of \$1,000.00.

16. The Court finds that plaintiff is gainfully employed at Wal-Mart earning \$6.95 per hour and averaging between 32 to 38 hours per week with a net pay of approximately \$373.00 each two weeks.

17. The Court finds that defendant is likewise employed at Wal-Mart earning a comparable wage to plaintiff but in addition, has remarried and his wife is gainfully employed and enlisted with the United States Air Force.

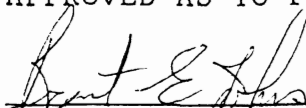
18. The Court finds that defendant has the financial ability to pay plaintiff's attorney's fees, that plaintiff is in financial need of having her attorney fees paid and the fees are reasonable and proper.

DATED this 23<sup>RD</sup> day of June, 1993.



W. BRENT WEST  
District Court Judge

APPROVED AS TO FORM:



BRENT E. JOHNS  
Attorney for Defendant

00201271

Tab 3

## ARMED FORCES

## 10 § 1174a

### Effective Date of 1983 Amendment

Section 911(c) of Pub. L. 98-94 provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1983."

Section 923(g) of Pub.L. 98-94 provided that: "The amendments made by this section [amending this section and sections 1401, 1402, 1402a, 3991, 3992, 6151, 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853o of Title 33, Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired

pay under section 1402, 1402a, 3992, or 8992 of Title 10, United States Code [sections 1402, 1402a, 3992, or 8992 of this title], of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section."

### Legislative History

For legislative history and purpose of Pub. L. 98-94, see 1983 U. S. Code Cong. and Adm. News, p. 1081. See, also, Pub.L. 98-498, 1984 U.S.Code Cong. and Adm.News, p. 2296; Pub.L. 101-189, 1989 U.S.Code Cong. and Adm. News, p. 838; Pub.L. 101-510, 1990 U.S.Code Cong. and Adm.News, p. 2931; Pub.L. 102-190, 1991 U.S.Code Cong. and Adm.News, p. 918.

### NOTES OF DECISIONS

#### 1. Spouse's property interest

Wife whose husband received separation pay as a severance benefit upon involuntary discharge from military under 10 U.S.C.A. § 1174 had present community property interest in husband's nonmatured longevity pension including the separation pay after husband reenlisted, since 10

U.S.C.A. § 1174(h)(1) compels reimbursement of separation pay from the service member's retirement benefits and hence purposes of separation pay to ease service member's reentry into civilian life have not been fulfilled. *Kuzmiak v. Kuzmiak*, 1986, 222 Cal.Rptr. 644, 176 C.A.3d 1152, review denied, certiorari denied 107 S.Ct. 276, 479 U.S. 885, 93 L.Ed.2d 252.

### § 1174a. Special separation benefits programs

(a) **Requirement for programs.**—The Secretary of each military department shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) **Benefits.**—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) **Eligibility.**—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years before December 5, 1991;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

(A) years of service;

- (B) skill or rating;
- (C) grade or rank; and
- (D) remaining period of obligated service.

[(6) Redesignated (5)]

(d) **Program applicability.**—The Secretary of a military department may provide for the program under this section to apply to any of the following members:

- (1) A regular officer or warrant officer of an armed force.
- (2) A regular enlisted member of an armed force.
- (3) A member of an armed force other than a regular member.

(e) **Applicability subject to needs of the service.**—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary of the military department concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) **Application requirements.**—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

- (i) submit a request for separation under the program before the expiration of the member's term of enlistment; or
- (ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pursuant to this section shall be considered a request for separation under the program.

(g) **Other conditions, requirements, and administrative provisions.**—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

(h) **Termination of program.**—(1) Except as provided in paragraph (2), the Secretary of a military department may not conduct a program pursuant to this section after September 30, 1995.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added Pub.L. 102-190, Div. A, Title VI, § 661(a)(1), Dec. 5, 1991, 105 Stat. 1394, and amended Pub.L. 102-494, Div. A, Title X, § 1052(15), Div. D, Title XLIV, §§ 4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2499, 2706, 2718.)

Tab 4

## HISTORICAL AND STATUTORY NOTES

## References in Text

Section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note), referred to in subsec. (b)(2)(B), is section 503(c) of Pub.L. 101-510, Div. A, Title V, Nov. 5, 1990, 104 Stat. 1558, which is set out as a note under section 406 of Title 37, Pay and Allowances.

The date of the enactment of this section, referred to in subsec. (c)(2), means the date of enactment of Pub.L. 102-190, which was approved Dec. 5, 1991.

## Effective Date of 1992 Amendments

Section 4405(c) of Pub.L. 102-484 provided that: "The amendments made by subsections (a) and (b) [amending subsec. (b)(2)(B) of this section and section 1175 of Title 10] shall apply as if included in sections 1174a and 1175 of title 10, United States Code [this section and section 1175 of this title], as enacted on December 5, 1991, but any benefits or services payable by reason of the applicability of the provisions of those amendments during the period beginning on December 5, 1991, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations."

## Commencement of Program

Section 661(b) of Pub.L. 102-190 provided that: "The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)) [this section], not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991]."

## Report on Programs

Pub. L. 102-190, Div. A, Title VI, § 663, Dec. 5, 1991, 105 Stat. 1399, provided that: "Not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991], the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the Secretary's assessment of the effectiveness of the programs established under sections 1174a and 1175 of title 10, United States Code [this section and section 1175 of this title], as added by sections 661 and 662."

## Legislative History

For legislative history and purpose of Pub.L. 102-190, see 1991 U.S. Code Cong. and Adm. News, p. 918. See, also, Pub.L. 102-484, 1992 U.S. Code Cong. and Adm. News, p. 1636.

## LIBRARY REFERENCES

Armed Services ¶23.1(6).  
C.J.S. Armed Services § 104.  
WESTLAW Topic No. 34.

## § 1175. Voluntary separation incentive

(a) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c), for the period of time the member serves in a reserve component.

(b) The Secretary of Defense may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

[(4) Redesignated (3)]

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary of the military department concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied

## 10 § 1175

## ARMED FORCES

by this incentive, provided the member has completed 6 years of active service before December 5, 1991.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After September 30, 1995, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service. The annual payment will be made for a period equal to the number of years that is equal to twice the number of years of service of the member.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3) A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

[(6) Repealed. Pub.L. 102-484, Div. D, Title XLIV, § 4406(b), Oct. 23, 1992, 106 Stat. 2707]

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense.

(h)(1) There is established on the books of the Treasury a fund to be known as the "Voluntary Separation Incentive Fund" (hereinafter in this subsection referred to as the "Fund"). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to pay voluntary separation incentives under this section.



(4) The Department of Defense Retirement Board of Actuaries (hereinafter in this subsection referred to as the "Board") shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1995—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1995, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1996, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added Pub.L. 102-190, Div. A, Title VI, § 662(a)(1), Dec. 5, 1991, 105 Stat. 1396; and amended Pub.L. 102-484, Div. A, Title X, § 1052(16), Div. D, Title XLIV, §§ 4405(b), 4406(a), (b), 4422(b), Oct. 23, 1992, 106 Stat. 2499, 2706, 2719.)

#### HISTORICAL AND STATUTORY NOTES

##### References in Text

The time this provision is enacted, referred to in subsec. (d)(1), probably means the date of enactment of Pub.L. 102-190, which was approved Dec. 5, 1991.

Section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note), referred to in subsec. (j), is section 503(c) of Pub.L. 102-510, Div. A, Title V, Nov. 5, 1990, 104 Stat. 1558, which is set out as a

Tab 5

## 10 § 1175

## ARMED FORCES

note under section 406 of Title 37, Pay and Allowances.

### Effective Date of 1992 Amendments

Amendment by section 4405(b) of Pub.L. 102-484 applicable as if included in this section as enacted on December 5, 1991, and benefits or services payable by reason of the applicability of provisions of such amendment between Dec. 5, 1991, and Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub.L. 102-484, set out as a note under section 1174a of Title 10, Armed Forces.

Section 4406(c) of Pub.L. 102-484 provided that: "The amendments to section 1175 of title 10, United States Code [this section], made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991."

### Voluntary Separation Incentives Payable from the Voluntary Separation Incentive Fund

Pub.L. 102-396, Title IX, § 9106, Oct. 6, 1992, 106 Stat. 1927, provided that: "After December 31, 1992, voluntary separation incentives payable

under 10 U.S.C. 1175 [this section] may be paid in such amounts as are necessary from the assets of the Voluntary Separation Incentive Fund established by section 1175(h)(1) [subsec. (h)(1) of this section]."

### Tax Treatment of Incentive

Section 662(b) of Pub.L. 102-190 provided that: "Notwithstanding the Internal Revenue Code of 1986 [Title 26, Internal Revenue Code] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)) [this section], shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member."

### Legislative History

For legislative history and purpose of Pub.L. 102-190, see 1991 U.S. Code Cong. and Adm. News, p. 918. See, also, Pub.L. 102-484, 1992 U.S. Code Cong. and Adm. News, p. 1636.

### LIBRARY REFERENCES

Armed Services ¶23.1(6).  
C.J.S. Armed Services § 104.  
WESTLAW Topic No. 34.

### § 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) **Regular members.**—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 8914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) **Reserve members.**—A reserve enlisted member serving on active duty who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged or released from active duty is entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, may not be discharged or released from active duty without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or released from active duty the member has at least 18, but less than 19, years of service computed under section 1332 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 1332 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or released from active duty.

(2) If as of the date on which the member is to be discharged or released from active duty the member has at least 19, but less than 20, years of service computed under section 1332 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 1332 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or released from active duty."

(Added Pub.L. 102-484, Div. A, Title V, § 541(a), Oct. 23, 1992, 106 Stat. 2412.)

**Legislative History**

legislative history and purpose of Pub L. 98-525, see 1992 U S Code Cong and Adm. News, p 1636

**CHAPTER 60—SEPARATION OF REGULAR OFFICERS  
FOR SUBSTANDARD PERFORMANCE OF DUTY  
OR FOR CERTAIN OTHER REASONS**

Authority to establish procedures to consider the separation of officers for sub-	Sec.	standard performance of duty and for certain other reasons
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**HISTORICAL AND STATUTORY NOTES**

<b>Amendment</b> Pub L. 98-525, Title V, § 524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted "Authority to establish procedures to consider the separation of	officers for substandard performance of duty and for certain other reasons" for "Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons" in item 1181.
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**1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons**

(1) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(2) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

Amended Pub L. 98-525, Title V, § 524(b)(1), Oct. 19, 1984, 98 Stat. 2524

**HISTORICAL AND STATUTORY NOTES**

<b>Amendment</b> Pub L. 98-525 substituted "Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons" for "Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons"	record" for "Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record"
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**Effective Date of 1984 Amendment**

Section 524(b)(3) of Pub L. 98-525 provided that "The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code [this section], as in effect before that date"

(a) Pub L. 98-525 substituted "Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record" for "Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record"

(b) Pub L. 98-525 substituted "Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the

**Legislative History**

For legislative history and purpose of Pub L. 98-525, see 1984 U S Code Cong and Adm News, p 4174

Tab 6

LEGISLATIVE HISTORY  
HOUSE CONF. REP. NO. 102-311  
[page 556]

The conferees take this action because of their concern over the effect of strength reductions during the next few years on our men and women in uniform and their families. The conferees especially recognize that this drawdown in strength is different from previous drawdowns because it affects people who are a product of an all volunteer force. Therefore, the conferees would provide these temporary authorities as tools to assist the military Services in selectively reducing, on a voluntary basis, that portion of the career personnel inventory that is not retirement eligible. The conferees believe that these authorities would give a reasonable, fair choice to personnel who would otherwise have no option but to face selection for involuntary separation, and to risk being separated at a point not of their own choosing.

With regard to the first of the two provisions, the conferees agree that the "voluntary" separation pay benefit would be calculated at 15 percent of basic pay multiplied by the number of years of service of the separating member. Current involuntary separation pay is calculated on 10 percent of basic pay multiplied by the number of years of service of the separating member. The conferees believe this enhancement will provide an equitable, up-front incentive for personnel to choose in lieu of facing the prospect of involuntary separation. The enhanced separation pay benefit would be in addition to employment assistance, medical care, commissary and exchange shopping, housing, relocation assistance, and leave and travel benefits provided by the Congress in section 502 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510).

With regard to the second provision, the conferees recommend the voluntary separation incentive plan proposed by the Secretary of Defense, but provide that the incentive would be funded on an accrual basis in the same manner as military retirement pay and the Montgomery G.I. Bill benefits. In this regard, the conferees establish a voluntary separation incentive fund, and require the Department of Defense to begin paying into the fund starting on January 1, 1993. To facilitate the use of the voluntary separation incentive, the conferees authorize the Department of Defense to implement the incentive on an "unfunded basis" until December 31, 1992. However, the conferees require the Department of Defense to increase the fund to cover any unfunded liabilities incurred before that date in accordance with an amortization schedule approved by the Department of Defense Retirement Board of Actuaries.

The conferees note the Secretary of Defense's personal efforts to press the conferees for the adoption of the voluntary separation incentive be proposed. The conferees also note that the Secretary's proposal was submitted to the Congress on September 23, 1991. At the same time, he withdrew an earlier proposal that had been submitted to the Congress on July 25, 1991. Although several features of the revised proposal required further examination, the conferees decided to adopt, with the exception of the funding feature, the Secretary's revised proposal as submitted. The conferees did this largely on the basis of the Secretary's stated urgent need for the incentive. With regard to the funding of the voluntary separation incentive, the conferees believe that fiscal responsibility requires accrual funding of this benefit, and the Secretary concurs. It is on

## DEFENSE AUTHORIZATION ACT

P.L. 102-190

[page 557]

the basis of the agreement that the voluntary separation incentive would be funded on an accrual basis that the conferees accept the Secretary's revised proposal.

The conferees further authorize the Secretary of Defense to waive up to two percent of the active duty end strengths authorized for fiscal year 1992 in order to avoid any involuntary separations, and to transfer funds for such purpose.

Finally, the conferees require the Secretary of Defense to report on the effectiveness of the authorities provided in this section in reducing involuntary separations six months after they are implemented. In this regard, the conferees are concerned about provisions in the voluntary separation incentive, as proposed by the Department of Defense, included in this section. For example, the conferees are uncertain about the advisability of the provisions that would require individuals who receive the incentive to forfeit their entitlement to count their military service for federal civil service retirement purposes; and to offset the incentive against future receipt of Reserve drill pay and active duty pay. The conferees are also uncertain about the advisability of the provision that would allow for the unlimited designation of beneficiaries of the incentive by the member in event of the member's death.

In addition, the conferees are interested in exploring other options to help the military Services reduce their personnel inventory on a voluntary basis. For example, personnel overages in the 15- to 20-year segment of the force may be trimmed by offering an early retirement option. The conferees understand that the Department of Defense does not intend to offer the voluntary separation incentives provided in this section to the 15- to 20-year segment of the force, so an early retirement option may be a viable alternative.

The Senate conferees note that many very well qualified individuals in this segment of the force could contribute their skills in public education as teachers. In this regard, the Senate conferees are interested in exploring the possibility of linking an early retirement option with service in public education. Alternatives could include a deferred military retirement annuity that would be funded in part by contributions from an educational institution, or other variations on this theme. In order for the Senate conferees to evaluate such a program, the Senate conferees expect the Secretary of Defense to include in the report required by this section an evaluation of the feasibility, desirability, and cost of such a program.

The conferees expect the Committees on Armed Services of the Senate and the House of Representatives to consider any changes and initiatives, such as an early retirement option, that may be appropriate to improve the effectiveness of these personnel authorities.

### *Overpayment of certain members who served in support of the Persian Gulf conflict*

The conferees understand that a large number of military personnel, especially National Guardsmen and Reservists, who served in support of the Persian Gulf conflict have been erroneously overpaid. According to preliminary estimates, over 120,000 service members have been overpaid, and the amount of the erroneous

Tab 7



## CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) CAAUWE DARYL GENE		2. DEPARTMENT, COMPONENT AND BRANCH AIR FORCE--REG AF		3. SOCIAL SECURITY NO. 470 64 4929	
4.a. GRADE, RATE OR RANK TSGT		4.b. PAY GRADE E6		5. DATE OF BIRTH (YYMMDD) 1952 Apr 10	
6. RESERVE OBLIG. TERM. DATE Year NA Month Day		7.a. PLACE OF ENTRY INTO ACTIVE DUTY Minneapolis MN		7.b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) Owatonna MN	
8.a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 34 FS (ACC)		8.b. STATION WHERE SEPARATED HILL AFB UT		9. COMMAND TO WHICH TRANSFERRED USAFR	
10. SGLI COVERAGE Amount: \$ 100,000		11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years) 45274B, Tac Acft Maint Techn., F-16, years and months 45274M, Tac Acft Maint Techn. General years and months		12. RECORD OF SERVICE	
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Air Force Commendation Medal W/1 Oak Leaf Cluster (OLC); AF Achievement Mdl; AF Outstanding Unit Award Ribbon W/1 OLC; AF Good Conduct Mdl W/4 OLCs; National Defense Service Mdl W/1 Bronze Service Star (BSS); Southwest Asia Service Mdl W/2 BSSs; Kuwait Liberation Mdl; Humanitarian Service Mdl; AF Overseas Short Tour Rbn W/1 OLC; AF Overseas (SEE REMARKS)		14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) Basic Military Trng 6 wks, Jul 1980; Supervisory Development Crs, 2 wks, Apr 1981; NCO Leadership School, 4 wks, Jul 1983.		15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM	
16. DAYS ACCRUED LEAVE PAID		17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION		18. REMARKS BLOCK 13 CONT: Overseas Long Tour Rbn; AF Longevity Service Award Rbn W/3 OLCs; Noncommissioned Officer Professional Military Educ Grad Rbn; Small Arms Expert Marksmanship Rbn; AF Training Rbn. TERM OF CURRENT ENLISTMENT: 6 Years SUBJECT TO RECALL TO ACTIVE DUTY BY THE SECRETARY OF THE AIR FORCE. NOTHING FOLLOWS	
19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) 1200 S. 1500 E. Apt 2097 Clearfield UT 84015		19.b. NEAREST RELATIVE (Name and address - include Zip Code) Glara Sartorius HCR Box 85 Warba MN 55793-9777		20. MEMBER REQUESTS COPY 6 BE SENT TO UT DIR. OF VET AFFAIRS Yes No	
21. SIGNATURE OF MEMBER BEING SEPARATED		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) DOREEN N. WALLACE, GS-6 CHIEF, SEPS/RETS		23. TYPE OF SEPARATION RELEASE FROM ACTIVE DUTY	

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)		
24. CHARACTER OF SERVICE (Include upgrades) HONORABLE		25. SEPARATION AUTHORITY AFR 39-10
26. SEPARATION CODE SPD:MCA		27. REENTRY CODE 3V
28. NARRATIVE REASON FOR SEPARATION VOL RELEASE/TRANS TO ANOTHER SVC COMPONENT FOR EARLY RELEASE-VOLUNTARY SEPARATION INCENTIVE		
29. DATES OF TIME LOST DURING THIS PERIOD NONE		30. MEMBER REQUESTS COPY 4 Initials

# CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) <b>DAVIDE, DAVID, GENE</b>		2. DEPARTMENT, COMPONENT AND BRANCH <b>ALC FORCE--REG AF</b>		3. SOCIAL SECURITY NO. <b>ATZ 144 4820</b>	
1a. GRADE, RATE OR RANK <b>SGT</b>	4a. PAY GRADE <b>EA</b>	5. DATE OF BIRTH (YYMMDD) <b>1952 Apr 10</b>		6. RESERVE OBLIG. TERM DATE Year <b>94</b> Month <b>1</b> Day <b>1</b>	
7a. PLACE OF ENTRY INTO ACTIVE DUTY <b>Winnemuccia NV</b>		7b. HOME OF RECORD AT TIME OF ENTRY (City and state or complete address if known) <b>Owatonna MN</b>			
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND <b>4 FS (ACC)</b>		8b. STATION WHERE SEPARATED <b>HILL AFB UT</b>			
9. COMMAND TO WHICH TRANSFERRED <b>SAFE</b>				10. SGLI COVERAGE <input type="checkbox"/> None Amount \$ <b>100,000</b>	
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) <b>5274B, Tac Acft Maint Techn., F-16, 3 years and 00 months 5274H, Tac Acft Maint Techn., General 1 year and 02 months</b>		12. RECORD OF SERVICE			
		a. Date Entered AD This Period <b>1978</b> <b>Jul</b> <b>03</b>			
		b. Separation Date This Period <b>1992</b> <b>Dec</b> <b>31</b>			
		c. Net Active Service This Period <b>14</b> <b>02</b> <b>23</b>			
		d. Total Prior Active Service <b>03</b> <b>04</b> <b>10</b>			
		e. Total Prior Inactive Service <b>04</b> <b>01</b> <b>15</b>			
		f. Foreign Service <b>03</b> <b>03</b> <b>01</b>			
		g. Sea Service <b>03</b> <b>03</b> <b>01</b>			
		h. Effective Date of Pay Grade <b>03</b> <b>03</b> <b>01</b>			
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) <b>1st Force Commendation Medal w/1 Oak Leaf Cluster (OLC); AF Achievement Mdl; AF Outstanding Airmen Award Ribbon w/1 OLC; AF Good Conductor Mdl w/4 OLCs; National Defense Service Mdl w/1 Comm Service Star (RSS); Southwest Asia Service Mdl w/2 RSSs; Kuwait Liberation Mdl; Humanitarian Service Mdl; AF Overseas Short Tour Rbn w/1 OLC; AF Overseas (SEE REMARKS)</b>					
14. MILITARY EDUCATION (Course title, number of weeks and month and year completed) <b>Basic Military Trng 6 wks, Jul 71; Newcommissioned Officer Orientation Crs, 2 wks, Jul 1980; Supervisory Development Crs, 2 wks, Apr 1981; NCO Leadership School, 4 wks, Jul 1983.</b>					
15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		13b. HIGH SCHOOL GRADUATE OR EQUIVALENT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		16. DAYS ACCRUED LEAVE PAID <b>-1.5-</b>	
17. MEMBER HAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
18. REMARKS <b>REMARKS: 1. MEMBER WAS FILER OF RM OF</b>					
19. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) <b>PO B. 1300 B. Apt 2007 Garfield VT 05445</b>		20. NEAREST RELATIVE (Name and address - Include Zip Code) <b>Glenn H. Hargrave, RCR Box 85 Garfield VT 05445</b>			
21. MEMBER REQUESTS COPY 4 BE SENT TO <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) <b>David G. Davide, SGT, AFSC 3110, AFSC 3110</b>			
23. SPECIAL ADDITIONAL INFORMATION (To be filled in by authorized agencies only)					
24. TYPE OF SEPARATION <b>RELEASE FROM ACTIVE DUTY</b>		25. CHARACTER OF SERVICE (Include upgrades) <b>REGULAR</b>			
26. SEPARATION AUTHORITY <b>10-10</b>		27. SEPARATION CODE <b>AFSC 3110</b>		28. REENTRY CODE <b>3V</b>	
29. NARRATIVE REASON FOR SEPARATION <b>RELEASE/TRANS TO ACTIVE DUTY COMPONENT FOR LATE RELEASE</b>					
30. DATES OF TIME LOST DURING THIS PERIOD <b>0</b>				31. MEMBER REQUESTS COPY 4 <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Initials <b>LC</b>	

Caauwe, David  
Name of Member

470-64-4929  
SSN

Anticipated DOS: 921231

TAFMSO: 750324

Months of Service: (213) 17 YRS 9 MO

SSB Total (Lump Sum): \$ 56,839.05

~~VSI - Annual Installment~~: \$ 9,473.17

~~Number of Installments~~: 35

Final installment is: 1/6 1/3 2/3 5/6 (circle one)  
of full installment.

~~Number of Installments~~

\$ 336,297.53

NOTE: All figures above are gross amounts and are subject to 20 percent FITW deduction and applicable percentage of SITW deduction.

"This computation may not include all creditable service if the member has creditable Reserve or National Guard service. Upon receipt of a certification of total creditable service computed under 10 U.S.C. 1405, we will recompute the member's entitlement and provide a final figure. The CBPO should advise the member that these figures are tentative, and are based upon information furnished by the CBPO."

Paula Christensen  
PREPARED

Kevin L. Ell  
AUDITOR

DATE PREPARED: 920709

\*\*\*FOR AFO USE ONLY\*\*\*

SSB: 1,779.00 X 213 X 1% = 56,839.05  
Base Pay # Months Total SSB

VSI: 1,779.00 X 213 X 2.5% = 9,473.17  
Base Pay # Months Annual Installment

VSI Installments: 213 X 2 1/3% = 35.50  
# Months # Annual Installments

Required prints: MC, OL, TI

UNLISTED VOLUNTARY SEPARATION INCENTIVE (VSI) AGREEMENT

1. Pursuant to 38 U.S.C. 1075 I, TSGT CAANWE, DARYL G., 470-64-4929,  
Name/Rank, SEN.

in consideration of receiving voluntary separation incentive (VSI) in the amount of  
\$ 336,297.53, agree to separate from active duty and accept an enlistment in or transfer  
to the Ready Reserve for a period of 35 years 06 months (twice the number of years  
of active duty completed at the time I separated from active duty), until 30 JUN 2026.

2. CONDITIONS OF AGREEMENT. I understand and agree that:

a. My date of separation from active duty is 31 DEC 92. Payment will be made to  
me as follows: \$ 9,473.17 on the date I separate and an equal amount on each  
anniversary of my separation date thereafter until the total amount in paragraph 1 is  
paid.

b. The amount of each annual payment will not change (no cost of living  
adjustments), except that the last payment may be less due to partial year calculation.

c. The annual VSI payment will be taxed as normal income in the year it is received  
and will be subject to Federal and State (if applicable) income tax withholding.

d. Receipt of the annual payment is contingent upon my continued service in the  
Ready Reserve for the length of the agreement, except as provided in (1) below.

(1) If I become ineligible to continue to serve in the Ready Reserve due to  
years of service, age, medical reasons, or other reasons beyond my control, I will be  
transferred to the Standby Reserve unless I am qualified and request transfer to the  
Active Reserve. In either case I will continue to receive annual VSI payments for the  
remaining period authorized.

(2) My annual VSI payments will stop if I separate from the Ready Reserve for  
any reason within my control (this includes involuntary separation for any reason  
within my control). Once separated, the payments cannot be started again.

e. If I perform active duty, active duty for training, or inactive-duty training  
while in the Ready Reserve, I will forfeit an amount of VSI payable for the same period  
that is equal to the amount of basic pay or compensation received for the active duty,  
active duty for training, or inactive-duty training.

f. If, by virtue of my reserve service or otherwise, I later become eligible for  
retired or retainer pay under title 10 or title 14, U.S.C., based in part on active duty  
for which I received VSI, I will have an amount deducted from each payment of that  
retired or retainer pay until the amount deducted equals the total amount of VSI  
annually received; (any amount of VSI forfeited under paragraph e above is excluded

g. I will not request or apply for reenlistment in a regular component of any  
military service.

h. My eligibility for separation benefits and services is limited to transition  
services of employment assistance, pre-separation counseling, and relocation assistance.

i. The years of service for which I receive VSI may not be counted in computing  
eligibility for, or the amount of, annuities under title 5, U.S.C., or any other law  
providing annuities to Federal civilian employees.

j. My right to VSI payments is not transferable except that I may designate and  
change designation of beneficiary or beneficiaries to receive voluntary separation  
incentive payments in the event of my death.

Notes: The amounts and dates specified in this agreement may change if the separation  
date ultimately differs from the date in paragraph 2a.

31 DEC 92  
(Date)

[Signature]  
(Date)

[Signature]  
(Signature)

[Signature]  
(Witness Signature)

VOLUNTARY SEPARATION INCENTIVE (VSI) STATEMENT  
BENEFICIARY DESIGNATION

3 Nov 92  
(DATE)

470-64-4929

I, DARYL G CAAUWE TSgt, in the event of my death prior to  
(Name, Grade, SSN)  
receiving all of my voluntary separation incentive payments,  
designate the following individual(s), as beneficiary/beneficiaries  
to receive those payments.

List name and relationship:

LINDA A CAAUWE (WIFE)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

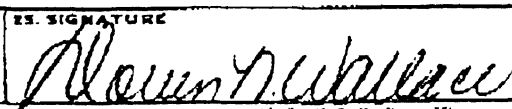

Daryl G CAAUWE 470-64-4929  
(Signature) (SSN)  
(Type Name)

DARYL G. CAAUWE, 470-64-4929

- Note:
1. Designation of beneficiary/beneficiaries may be changed by writing to: HQ ARPC/DSM  
Denver, Co 80280-5000
  2. Place "Not Used" in unused beneficiary lines.
  3. If more than one beneficiary, each will share equally.
  4. In the event that a beneficiary predeceases me, my VSI will go to the remaining beneficiary or beneficiaries in equal shares.
  5. In the event that all my beneficiaries predecease me or no beneficiaries are designated, my VSI will go to my estate.

# REQUEST AND AUTHORIZATION FOR SEPARATION

(THIS FORM IS AFFECTED BY THE PRIVACY ACT OF 1974. USE BLANKET PARAFORM 11)

1. TYPE OF SEPARATION, MEMBER IS: <input type="checkbox"/> DISCHARGED <input type="checkbox"/> ENTRY LEVEL SEPARATION <input type="checkbox"/> RELEASE FROM VOID ENLISTMENT <input type="checkbox"/> RELEASED FROM EAD/REVERTS TO ANG <input checked="" type="checkbox"/> RELEASED FROM ACTIVE DUTY/TRANSFERRED TO RESAF <input type="checkbox"/> RELEASED FROM EAD/REVERTS TO RESAF <input type="checkbox"/> DISMISSAL									
2. AUTHORITY: <input type="checkbox"/> BY DIRECTION OF THE PRESIDENT <input type="checkbox"/> RESIGNATION ACCEPTED BY THE PRESIDENT									
3. NAME (Last, First, MI), GRADE, SSAN CAAUWE, DARYL G., TSGT (E-6), 470-64-4929						4. PLACE OF ENTRY ON ACTIVE DUTY OR ENLISTMENT Minneapolis MN			
5. HOME OF RECORD Owatonna MN			6. FUTURE MAILING ADDRESS 1200S 1500E Apt 2097 Clearfield UT 84015				7. <input type="checkbox"/> UNDER 2 YEARS SERVICE (E-4 Only)		
8. PAFSC 45274B	9. RESERVE AF GRADE TSGT (E-6)		10. MIL SVC OBLIGATION Yes		11. AERONAUTICAL RATING N/A		12. FLYING STATUS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
13. EFFECTIVE DATE 31 Dec 92		14. CHARACTER OF SERVICE <input checked="" type="checkbox"/> HONORABLE <input type="checkbox"/> GENERAL (Under Honorable Conditions) <input type="checkbox"/> UNCHARACTERIZED <input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS <input type="checkbox"/> BAD CONDUCT DISCHARGE <input type="checkbox"/> DISHONORABLE DISCHARGE				15. CERTIFICATE ISSUED <input type="checkbox"/> DD FORM 256AF <input checked="" type="checkbox"/> DD FORM 214			
16. RELIEVED FROM ASSIGNMENT (Unit, Major Command, Address and Servicing CBPO) 34FS (ACC) CBPO: OOALC/DPMPR (AFMC) HILL AFB UT 84056 HILL AFB UT 84056						17. WILL PROCEED TO: <input type="checkbox"/> PLACE OF ENTRY ON ACTIVE DUTY OR ENLISTMENT <input type="checkbox"/> HOME OF RECORD <input checked="" type="checkbox"/> HOME OF SELECTION			
18. TRAVEL BY PRIVATE CONVEYANCE (TPC) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, WITH DAYS TRAVEL TIME PERMITTED. <u>NA</u>									
19. MEMBER QUALIFIES FOR FULL TRAVEL/TRANSPORTATION ENTITLEMENT UNDER THE JPTR PARA 4512 <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO									
20. ASSIGNED TO (Check if Applicable)									
A. ARPC DENVER, CO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			B. REVERTS TO CONTROL OF ANG (Name of State)			C. TYPE OF POSITION <input type="checkbox"/> MOBILIZATION AUGMENTEE <input type="checkbox"/> REINFORCEMENT DESIGNEE <input type="checkbox"/> UNIT			
D. UNIT OF ASSIGNMENT AND CBPO			E. TNG/PAY CATEGORY		F. RESERVE SECTION CODE		G. FUNCTIONAL ACCT CODE		
			H. AUTHORIZED GRADE		I. AUTHORIZED AFSC		J. POSITION CONTROL NO.		
11. A. ELIGIBLE FOR: PER 10 USC 1174 <input type="checkbox"/> READJUSTMENT PAY <input checked="" type="checkbox"/> SEPARATION PAY			B. ENTITLED TO SEVERANCE PAY SERVICE FOR PAY IS: YEARS MONTHS DAYS				C. CHAPTER 61, 10 U.S.C. DISABILITY <input type="checkbox"/> NOT ENTITLED TO BENEFITS <input type="checkbox"/> NOT APPLICABLE		
CREDITABLE ACTIVE FEDERAL SERVICE YEARS MONTHS DAYS 17 09									
2. REMARKS ITEMS 3, 6, 7, & 9 ON REVERSE APPLY. Linda A (SP); Tammy M (D/7Jul76); Stacy L (D/20Dec74)									
3. DATE 11 Aug 92		24. ORDERS ISSUING/APPROVING OFFICIAL (Name, Grade, Title, Phone) DOREEN N. WALLACE, GS-6, DAF 7-2854 CHIEF, SEPARATIONS/RETIREMENTS UNIT				25. SIGNATURE 			
6. EXPENSES CHARGEABLE TO: 5723500 322 5881.9* 503725 PCS CODE: S (*Insert M, D, H, I, T, G, or Y)									
NONTEMPORARY STORAGE CHARGEABLE TO: 5723500 322 5888.ON 503725 PCS CODE: S									
CIC: TAC:									
7. DESIGNATION AND LOCATION OF HEADQUARTERS DEPARTMENT OF THE AIR FORCE HQ 2849TH AIR BASE GROUP (AFMC) HILL AIR FORCE BASE UTAH 84056				28. AUTHORITY AFR 39-10		29. SPECIAL ORDER NO. A2359		30. DATE 3 Sep 92	
				31. FOR PCS FOR THE COMMANDER					
8. DISTRIBUTION "B" 1-DPS 1-HQ ARPC/DPRB DENVER CO 80280-5000				33. SIGNATURE ELEMENT OF ORDERS AUTHENTICATING OFFICIAL  GAIL CARLSON CHIEF, BASE INFORMATION MANAGEMENT					